

Carla Bienkowski

PIA 2019-17

From: 72975-61795920@requests.muckrock.com
Sent: Monday, May 20, 2019 2:29 AM
To: Carla Bienkowski
Subject: RE: Texas Public Information Act Request: Follow up

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Texas Credit Union Department
Texas Public Information Act Office
Credit Union Department
914 E. Anderson Lane
Austin, TX 78752

May 20, 2019

This is a follow up to a previous request:

Hi Carla,

Could I request a copy of TCUD's policy or procedure regarding what to do in case of a confidential information leak, or would I have to file another request for that?

Thanks!

Filed via MuckRock.com
E-mail (Preferred): 72975-61795920@requests.muckrock.com
Upload documents directly:
https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Ftexas-credit-union-department-17255%252Ffollow-up-72975%252F%253Femail%253DCarla.Bienkowski%252540tud.texas.gov&url_auth_token=AABS6VfolgYsYzUBuRfYqvhbst8%3A1hScjP%3A0JG2PJAB5gT5TLjimpkRO-3teCc
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For mailed responses, please address (see note):
MuckRock News
DEPT MR 72975
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On May 16, 2019:

Attached is the Department's response to your public information request

Carla Bienkowski
Legal Assistant
Credit Union Department
carla.bienkowski@ cud.texas.gov
512-837-9236
512-832-0278 (fax)

This email, including all attachments, may be confidential and/or privileged under law - specifically including Tex. R. Civ. P. 192, Article V of the Texas Rules of Evidence, and other applicable statutory, quasi-statutory, and common law. Accordingly, pursuant to Chapter 552 of the Texas Gov't Code (the "Texas Public Information Act") and court interpretations thereof, the information that is contained within this communication may not be subject to disclosure to the public under Section 552.101, et seq., of the Code - specifically including Sections 552.103, 552.107, 552.108, and 552.111 - and further may be protected from disclosure or production for other purposes, such as in the context of civil discovery. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED.

On May 10, 2019:

To Whom It May Concern:

Pursuant to the Texas Public Information Act, I hereby request the following records:

A copy of any letters sent regarding my previous Texas Public Information Act request. The specific request referenced here is the one in which Carla released confidential information. Please let me know if you require any additional information to identify these documents.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

John Ricker

Filed via MuckRock.com

E-mail (Preferred): 72975-61795920@requests.muckrock.com

Upload documents directly:

https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Ftexas-credit-union-department-17255%252Ffollow-up-72975%252F%253Femail%253DCarla.Bienkowski%252540cud.texas.gov&url_auth_token=AABS6VfolgYsYzUBuRfYqvhbst8%3A1hScjP%3A0JG2PJAB5gT5TLjjmpkRO-3teCc

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SEC. 122.261. CONFIDENTIALITY.

(a) A determination letter, a cease and desist order, a removal order, each copy of a notice or correspondence, and all other documents or records relating to an order or determination letter issued under this subchapter are confidential and are not subject to public disclosure except in an action authorized by this subtitle or other authority.

(b) The commissioner may disclose the information described by Subsection (a) to a share and deposit guaranty corporation or credit union or to a department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines the disclosure is necessary or proper for the enforcement of the laws of this state or the United States.

(c) The commissioner may release information regarding the existence of a final order to the public if the commissioner concludes that the release would enhance effective enforcement of the order.

CHAPTER 123. GENERAL POWERS

SUBCHAPTER A. GENERAL POWERS

SEC. 123.001. GENERAL POWERS.

A credit union may exercise any power necessary or appropriate to accomplish the purposes for which it is organized and any power granted a corporation authorized to do business in this state, including any power specified in this chapter.

SEC. 123.002. INCIDENTAL POWERS.

A credit union may exercise any right, privilege, or incidental power necessary or appropriate to exercise its specific powers and to accomplish the purposes for which it is organized.

SEC. 123.003. ENLARGEMENT OF POWERS.

(a) A credit union may engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

(b) Notwithstanding any other law, and in addition to the powers and authorities conferred under Subsection (a), a credit union has the powers or authorities of a foreign credit union operating a branch in this state if the commissioner finds that exercise of those powers or authorities is convenient for and affords an advantage to the credit union's members and maintains the fairness of competition and parity between the credit union and any foreign credit union. A credit union does not have the field of membership powers or authorities of a foreign credit union operating a branch in this state.

SUBCHAPTER B. OPERATIONAL POWERS

SEC. 123.101. CONTRACTS.

A credit union may make contracts.

SEC. 123.102. POWER TO SUE AND DEFEND.

A credit union may sue or be sued in the name of the credit union.

SEC. 123.103. PURCHASE AND SALE OF PROPERTY.

Subject to commission rules, a credit union may purchase, hold, lease, or dispose of property necessary or incidental to the operation or purpose of the credit union.

SEC. 123.104. MEMBERSHIP IN OTHER ORGANIZATION; OPERATION AS CENTRAL CREDIT UNION.

A credit union may:

of the proceeds of an account in the manner provided by this section, regardless of whether it has knowledge of a competing claim, unless the credit union receives actual knowledge that payment has been restrained by court order.

(d) This section does not require a credit union to accept an account from a trustee or to search for the location of a named beneficiary that is not named in its records.

(e) This section does not affect a contractual provision to the contrary that otherwise complies with the laws of this state.

(f) For purposes of this section, "actual knowledge" is presumed if a credit union possesses a copy of a trust agreement that is certified as to authenticity by a settlor, trustee, beneficiary, or an attorney for the settlor, trustee, or beneficiary.

SUBCHAPTER E. THIRD-PARTY CLAIMS AND OTHER RIGHTS RELATING TO ACCOUNTS

SEC. 125.401. THIRD-PARTY CLAIM.

(a) In this section:

(1) "Credit union" includes:

- (A) a credit union organized under the laws of this state;
- (B) a foreign credit union; and
- (C) a federal credit union.

(2) "Out-of-state credit union" means a credit union that:

- (A) is not organized under the laws of this state; and
- (B) has its main or principal office in another state or country.

(3) "Texas credit union" means a credit union that:

- (A) is organized under the laws of this state or federal law; and
- (B) has its main or principal office in this state.

(b) A credit union doing business in this state must be served with citation or other appropriate process issued from a court in connection with a suit instituted by a third party to recover or establish an interest in a deposit or share account before the credit union is required to:

- (1) recognize the third party's claim;
- (2) withhold payment of the account to any party to the account; or
- (3) withhold payment to the order of any party to the account.

(c) A claim against a depositor, joint account owner, or member of a credit union shall be delivered or otherwise served as required or permitted by law at the address of the registered agent of the credit union as designated in a registration filed under Section 201.102 or 201.103, as applicable.

(d) A claim against a depositor, joint account owner, or member of an out-of-state credit union that files a registration statement under Section 201.102 or a Texas credit union that files a registration statement under Section 201.103 is not effective with respect to the credit union if the claim is served or delivered to an address other than the address of the credit union's registered agent as provided in the registration.

(e) To prevent or limit a credit union's compliance with or response to a claim subject to this section, the depositor, joint account owner, or member must seek an appropriate remedy, including a restraining order, injunction, or protective order, to prevent or suspend the credit union's response to a claim against the depositor, joint account owner, or member.

(f) A credit union that does not register with the secretary of state under Section 201.102 or 201.103 is subject to service or delivery of all claims against depositors, joint account owners, or members of the credit union or against the credit union itself by serving the president or vice president of the credit union or as otherwise provided by law.

SEC. 125.402. DISCLOSURE OF RECORDS OF MEMBER; CONFIDENTIALITY.

(a) A credit union is not required to disclose or produce to a third party or permit a third party to examine a record pertaining to the affairs of a credit union member unless:

(1) the request is made in connection with an examination or audit by a government agency authorized by law to examine credit unions;

(2) the member consents to the disclosure or production of the record; or

(3) the request is made by the department or is made in response to:

- (A) a subpoena or other court order; or
- (B) an administrative subpoena or summons issued by a state or federal agency as authorized by law.

(b) The commission may authorize the disclosure of information relating to a credit union member under circumstances and conditions that the commission determines are appropriate or required in the daily operation of the credit union's business.

(c) The commission may adopt reasonable rules relating to the:

(1) permissible disclosure of nonpublic personal information about the accounts of credit union members; and

(2) duties of the credit union to maintain confidentiality of member accounts.

(d) The directors, officers, committee members, and employees and any honorary or advisory directors of a credit union shall hold in confidence all information regarding transactions of the credit union, including information concerning transactions with the credit union's members and the members' personal affairs, except to the extent necessary in connection with making, extending, or collecting a loan or extension of credit, or as otherwise authorized by this section, commission rules adopted under Subsection (c), or other applicable law.

SEC. 125.403. RECOVERY OF DOCUMENT PRODUCTION EXPENSES FROM THIRD PARTY.

(a) A credit union or federal credit union doing business in this state is entitled to recover from a third party the reasonable cost actually incurred in disclosing or producing a record under this subtitle or other applicable law unless the cost was incurred in connection with an examination or audit by a government agency authorized by law to examine credit unions.

(b) The cost incurred in disclosing or producing a record includes the cost of reproduction, postage, or delivery.

SEC. 125.404. LIENS AND SETOFFS.

(a) To the extent of a member's direct or indirect indebtedness to a credit union, the credit union has:

(1) a lien, enforceable with or without judicial process, on the member's shares and deposits, accumulated dividends, and interest; and

(2) a right to set off against the member's shares, deposits, accumulated dividends, and interest.

(b) A credit union may allow a withdrawal to be made without affecting the credit union's right to a setoff or lien.

SEC. 125.405. ACCOUNT WITHDRAWALS.

(a) A credit union may require not longer than 60 days' notice for a withdrawal from a share or deposit account.

(b) The commissioner may impose an advance withdrawal notice requirement following issuance of a cease and desist order under Chapter 122. The commissioner by rule may require that a requirement imposed under this subsection apply to all members of the credit union.

(c) A membership share may not be withdrawn unless membership in the credit union is terminated.

SUBCHAPTER F. SAFE DEPOSIT BOXES

SEC. 125.501. RENTAL OF SAFE DEPOSIT BOX.

A credit union or federal credit union may maintain and rent safe deposit boxes.

SEC. 125.502. RELATIONSHIP BETWEEN CREDIT UNION AND BOX HOLDER.

(a) In the absence of a contract to the contrary, the relationship between a credit union and the renter of a safe deposit box maintained at the credit union is that of lessor and lessee and landlord and tenant. The rights and liabilities of the credit union are governed by the law governing those relationships.

(b) The lessee is for all purposes in possession of the box and its contents.

SEC. 125.503. ACCESS BY MORE THAN ONE PERSON.

(a) In the absence of a contract to the contrary, a credit union shall allow each holder of a safe deposit box jointly held in the name of two or more persons or a person other than the lessee designated in the lease agreement:

(1) access to the box; and

(c) If a credit union believes that the routing number imprinted on a key, or a tag attached to a key, used to access a safe deposit box has been altered or defaced in a manner that the correct routing number is illegible, the credit union shall notify the Department of Public Safety, on a form designated by the commissioner, not later than the 10th day after the date the key is used to access the box.

(d) This section does not require a credit union to inspect the routing number imprinted on a key or an attached tag to determine whether the number has been altered or defaced.

SEC. 125.509. LIABILITY FOR ACCESS TO OR REMOVAL OF CONTENTS.

A credit union that has identified the keys to a safe deposit box in accordance with Section 125.508 and that follows applicable law and the credit union's established security procedures in permitting access to the box is not liable for damages arising because of access to or removal of the box's contents.

SEC. 125.510. DELINQUENT RENTS.

(a) If the rental of a safe deposit box is delinquent for six months or longer, the credit union may open the box only if:

- (1) the credit union sends notice of the delinquency to the lessee; and
- (2) the rent is not paid before the date specified in the notice.

(b) The notice must:

- (1) be sent by certified mail, return receipt requested, to the lessee named in the books of the credit union at the address shown in those books; and
- (2) specify a date by which payment must be made that may not be before the 61st day after the date on which the notice is mailed.

(c) The box must be opened in the presence of two employees, and the credit union shall prepare a detailed inventory of the contents of the box as provided by reporting instructions of the comptroller. At least one of the employees must be an officer or manager of the credit union and a notary public.

(d) The credit union shall place the contents of the box in a sealed envelope or container that states the lessee's name. The credit union shall hold the contents of the box subject to a lien for:

- (1) the box's rental;
- (2) the cost of opening the box; and
- (3) any damage in connection with the box.

SEC. 125.511. AUCTION OF CONTENTS.

(a) If the rental, cost, and damages determined under Section 125.510(d) are not paid before the second anniversary of the date on which the box is opened, the credit union may:

- (1) sell all or part of the contents at a public auction in the manner and on the notice prescribed for the sale of real property under deed of trust under Section 51.002, Property Code; and
- (2) apply the sale proceeds to the rental, cost, and damages.

(b) The credit union shall send to the comptroller as provided by Chapter 74, Property Code:

- (1) the unauctioned contents of a box; and
- (2) any excess proceeds from the auction.

CHAPTER 126. CREDIT UNION SUPERVISION AND REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 126.001. APPOINTMENT OF CONSERVATOR OR LIQUIDATING AGENT.

The commissioner may appoint any person, including the share and deposit guaranty corporation or credit union provided for by Section 15.410, as a conservator or a liquidating agent under this chapter.

SEC. 126.002. CONFIDENTIALITY OF INFORMATION.

(a) Except as provided by Subsections (b) and (c), information obtained directly or indirectly by the department in any manner, including by application or examination, concerning the financial condition or business

affairs of a credit union and the files and records of the department relating to that information, except a statement intended for publication, are confidential.

(b) Confidential information may not be disclosed to a member of the commission, and a member of the commission may not be given access to the files or records of the department, except that the commissioner may disclose to the commission information, files, and records pertinent to a hearing or matter pending before the commission or the commissioner.

(c) The commissioner may disclose the information described by Subsection (a) to a law enforcement agency, a share insuring organization, or another department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this state applicable to credit unions.

(d) Information obtained by the department from a federal or state supervisory agency that is confidential under federal law or the laws of that state may not be disclosed except as provided by the applicable federal or state law.

(e) Confidential information that is provided by the department to a credit union, organization, or service provider of a credit union, whether in the form of a report of examination or otherwise, is the confidential property of the department. The recipient or an officer, director, employee, or agent of the recipient may not make the information public and may not disclose the information to a person not officially connected to the recipient as an officer, director, employee, attorney, auditor, or independent auditor, except as authorized by rules adopted under this subtitle. A credit union may disclose a report of examination or relevant portions of the report to another credit union proposing to merge or consolidate with the credit union or to a fidelity bond carrier if the recipient executes a written agreement not to disclose information in the report.

(f) Discovery of confidential information from a person subject to this subtitle or Chapter 15 under subpoena or other legal process must comply with rules adopted under this subtitle, Chapter 15, and any other applicable law. The rules may:

(1) restrict release of confidential information to the portion directly relevant to the legal dispute at issue; and

(2) require that a protective order, in a form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

SEC. 126.003. ENFORCEABILITY OF AGREEMENT MADE BY CREDIT UNION BEFORE CONSERVATORSHIP OR LIQUIDATION.

An agreement that tends to diminish or defeat the interest of the conservator or liquidating agent in an asset acquired under this chapter, either as security for a loan or by purchase, is not valid against the conservator or liquidating agent unless the agreement is:

- (1) in writing;
- (2) executed by the credit union and each person claiming an adverse interest under the agreement, including the obligor, contemporaneously with the acquisition of the asset by the credit union;
- (3) approved by the board with the approval recorded in the minutes of the board; and
- (4) an official record of the credit union continuously from the time of its execution.

SUBCHAPTER B. EXAMINATIONS

SEC. 126.051. EXAMINATIONS.

(a) The department, through examiners it appoints and in accordance with commission rules, shall periodically examine the books and records of each credit union.

(b) In lieu of an examination under this section, the commissioner may accept:

(1) the examination report of a regulator authorized to examine a credit union, foreign credit union, federal credit union, or other financial institution; or

(2) the audit report of an accountant, satisfactory to the commissioner, who has made and submitted a report of the condition of the affairs of a credit union, foreign credit union, federal credit union, or other financial institution.

(c) The commissioner may accept all or part of a report in lieu of all or part of an examination. An accepted part of the report has the same validity as an examination under this section.

SEC. 126.052. ACCESS TO INFORMATION.

An officer, director, agent, or employee of a credit union shall give an examiner free access to any information relating to the credit union's business, including access to books, papers, securities, and other records.

SEC. 126.053. WITNESSES; PRODUCTION OF DOCUMENTS.

- (a) In an examination conducted under this subchapter, the commissioner or the commissioner's designee may:
 - (1) subpoena witnesses;
 - (2) administer an oath or affirmation to a person, including any officer, director, agent, or employee of a credit union, and examine the person under oath or affirmation on any subject the commissioner considers pertinent to the financial condition or the safety and soundness of the activities of a credit union; or
 - (3) require and compel by subpoena the production of documents that are not voluntarily produced, including books, papers, securities, and records.
- (b) The commissioner may apply to a district court in Travis County for an order requiring a person to obey a subpoena, to appear, or to answer questions in connection with the examination or investigation.
- (c) The court shall issue an order under Subsection (b) if the court finds good cause to issue the subpoena or to take testimony.

SEC. 126.054. REPORT OF EXAMINATION.

- (a) An examiner shall report the results of an examination, including a general statement of the credit union's affairs, on a form prescribed by the commissioner and approved by the commission.
- (b) The department shall send a copy of the report to the board not later than the 30th day after the examination date.
- (c) The report of examination is confidential. The commissioner may provide a copy of the report to other parties as described in Section 126.002(c).

SEC. 126.055. FEE.

The commission may establish and a credit union shall pay a fee based on the cost of performing an examination of the credit union.

SUBCHAPTER C. CONSERVATORSHIP ORDER

SEC. 126.101. CONSERVATORSHIP ORDER; APPOINTMENT OF CONSERVATOR.

- (a) The commissioner may immediately issue a conservatorship order and appoint a conservator to manage a credit union's affairs if:
 - (1) the commissioner, in performing the duties under this subtitle, finds that:
 - (A) the credit union is insolvent or in imminent danger of insolvency; or
 - (B) the credit union or an employee, officer, or director of a credit union, including an honorary or advisory director has:
 - (i) violated this subtitle, a rule adopted under this subtitle, or another law that applies to credit unions;
 - (ii) violated or neglected a final order of the commissioner or commission;
 - (iii) refused to submit to examination under oath;
 - (iv) refused to permit the commissioner or the commissioner's representative to examine the credit union's records and affairs, including books, papers, and accounts;
 - (v) conducted the credit union's business in an unsafe, unauthorized, or unlawful manner; or
 - (vi) failed or refused to authorize and direct another person to permit the commissioner or the commissioner's representative to examine the credit union's records in the other person's custody or control, including books, papers, and accounts, following the commissioner's request for the granting of that authority and direction; and
 - (2) the commissioner determines that the finding under Subdivision (1) is sufficiently severe to require immediate affirmative action to prevent further dissipation of the credit union's assets.
- (b) The order must clearly state the grounds for conservatorship.
- (c) The board may:

- (1) agree in writing to a conservatorship order; and
- (2) waive its right to appeal the order under Section 126.105.

SEC. 126.102. SERVICE OF ORDER.

(a) A conservatorship order must be served personally to an officer or director of the credit union by the commissioner, the deputy commissioner, or another person authorized by the commissioner.

(b) Service may be by mail if an officer or director is not available for service on the date personal service of the order is attempted.

(c) Service by mail must be by certified or registered mail, must be addressed to the credit union at the address shown for its principal office by department records and to the home address of the chairman of the board and is complete on deposit of the order in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

SEC. 126.103. EFFECT OF ORDER.

Following service of a conservatorship order:

(1) the commissioner shall take possession and control of the credit union's books, records, property, assets, and business; and

(2) the credit union shall cease all operations except those authorized by the commissioner and conducted under the commissioner's supervision.

SEC. 126.104. Repealed by Acts 2013, 83rd Legislature, Regular Session

SEC. 126.105. APPEAL OF ORDER; HEARING.

(a) Unless the board waives its right to appeal under Section 126.101(c), the board may file a written appeal of the conservatorship order with the commissioner not later than the 10th business day after the date the order is served as provided by Section 126.102. The appeal must include a certified copy of the board resolution and must state whether the board requests a hearing.

(b) If the board requests a hearing, the commissioner shall promptly request from the State Office of Administrative Hearings a hearing date that is not earlier than the 11th day nor later than the 30th day after the date on which the commissioner receives the appeal.

(c) The commissioner shall give the credit union notice of the date, time, and place of the hearing.

(d) The filing of an appeal does not suspend the order, and the order remains in effect until the commissioner's final disposition of the appeal.

(e) Not later than the 45th day after a proposal for decision is received from the State Office of Administrative Hearings, the commission shall meet to consider the proposal.

SEC. 126.106. FAILURE TO APPEAL OR APPEAR.

If the board does not appeal the conservatorship order or fails to appear at the hearing provided for by Section 126.105, the credit union is presumed to have consented to the commissioner's disposition action, and the commissioner may dispose of the conservatorship matter as the commissioner considers appropriate.

SEC. 126.107. EXTENSION OF DATE AND TIME FOR HEARING.

The parties may agree to extend the date and time of the hearing.

SEC. 126.108. CONFIDENTIALITY; DISCLOSURE.

A conservatorship order and a copy of a notice, correspondence, transcript, pleading, or other document relating to the order are confidential and may be disclosed only in a related legal proceeding or as otherwise authorized by law. The commissioner may release to the public information regarding the existence of an order if the commissioner concludes that release of the information would enhance effective enforcement of the order.

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Texas Administrative Code

TITLE 7

BANKING AND SECURITIES

PART 6

CREDIT UNION DEPARTMENT

CHAPTER 91

CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER F

ACCOUNTS AND SERVICES

RULE §91.608

Confidentiality of Member Records

(a) Confidentiality of members' accounts. No credit union officer, director, committee member or employee may disclose to any person, other than the member, or to any company or governmental body the individual savings, shares, or loan records of any credit union member, contained in any document or system, by any means unless specifically authorized to do so in writing by such members, except as follows:

(1) reporting credit experience to a bona fide credit reporting agency, another credit union, or any other bona fide credit-granting business and/or merchants information exchange, provided that applicable state and federal laws and regulations pertaining to credit collection and reporting are followed;

(2) furnishing information in response to a valid request from a duly constituted government agency or taxing authority, or any subdivision thereof, including law enforcement agencies;

(3) furnishing information, orally or in written form, in response to the order of a court of competent jurisdiction or pursuant to other processes of discovery duly issuing from a court of competent jurisdiction;

(4) furnishing reports of loan balances to co-borrowers, co-makers, and guarantors of loans of a member and of share or deposit account balances, signature card information, and related transactions to joint account holders;

(5) furnishing information to and receiving information from check and draft reporting, clearing, cashing and authorization services relative to past history of a member's draft and checking accounts at the credit union; or

(6) as otherwise authorized by law, including access by examiners of the Department.

(b) Non-disclosure statement. Nothing in this rule shall prohibit the credit union from releasing the name and address of members to assist the credit union in its marketing efforts or sale of third party products, provided, however, that the credit union obtains a written non-disclosure statement providing assurances that the information will be used exclusively for the benefit of the credit union and no other.

(c) Privacy policy. Each credit union shall develop, implement and maintain a written policy on the protection of nonpublic personal information of individual members in its possession. This policy shall be consistent with the disclosure and reporting requirements applicable to federally insured credit unions as addressed in Part 716 of NCUA Rules and Regulations.

(d) Relation to federal laws. This section shall not be construed as altering or affecting any applicable federal statute, regulation, or interpretation that affords a member greater protection than provided under this section.

Source Note: The provisions of this §91.608 adopted to be effective July 8, 1994, 19 TexReg 4932; amended to be effective August 14, 2000, 25 TexReg 7634; amended to be effective July 11, 2004, 29 TexReg 6630

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Texas Administrative Code

TITLE 7

BANKING AND SECURITIES

PART 6

CREDIT UNION DEPARTMENT

CHAPTER 91

CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER Q

ACCESS TO CONFIDENTIAL INFORMATION

RULE §91.8000

Discovery of Confidential Information

(a) Policy. The legislature has determined that certain information is confidential and, with limited exceptions, should not be disclosed. See Texas Finance Code, §126.002. Non-disclosure under this section protects the stability of credit unions by preventing disclosures that could adversely impact the institutions. Inappropriate disclosures can result in substantial harm to credit unions and to those persons and entities (including other financial institutions) that have relationships with them. For example, the department may criticize a credit union in an examination report for a financial weakness that does not currently threaten the solvency of the credit union. If improperly disclosed, the criticism can lead to adverse impacts such as the possibility of a "run," short-term liquidity problems, or volatility in costs of funds, which in turn can exacerbate the problem and cause the failure of the credit union. These failures lead to reduced access to credit and greater risk to depositors. Further, since specific loans may be criticized in an examination report, confidentiality of the information protects the financial privacy of borrowers. Finally, protecting confidential information from disclosure facilitates the free exchange of information between the credit union and the regulator, encourages candor, and promotes regulatory responsiveness and effectiveness. Information that does not fall within the meaning of confidential information as defined in this section may be confidential under other definitions and controlled by other laws, and is not subject to this section.

(b) Disclosure prohibited. Pursuant to Finance Code §126.002, the department has an absolute privilege against disclosure of its confidential information. Discovery of confidential information from a person subject to §126.002 must comply with subsection (c) of this section. Only a person to whom confidential information has been released pursuant to §126.002 or this rule may disclose that information to another, and only in accordance with that section and this rule.

(c) Discovery of confidential information. A credit union, governmental agency, credit union service organization, service provider, or insuring organization that receives a subpoena or other form of discovery for the release of information that is confidential under §126.002 of the Act shall promptly:

- (1) notify the department of the request;
- (2) provide the department with a copy of the discovery documentation and, if requested by the department, a copy of the requested information; and
- (3) move for a protective order, or its equivalent under applicable rules of procedure. In addition, prior to the release of confidential information, such credit union, governmental agency, credit union service organization, service provider, or insuring organization must obtain a ruling on its motion in accordance with this section. Confidential information may be released only pursuant to a protective

order, or its equivalent, in a form consistent with that set out in this section and only if a court with jurisdiction has found that:

- (A) the party seeking the information has a substantial need for the information;
 - (B) the information is directly relevant to the legal dispute in issue; and
 - (C) the party seeking the information is unable without undue hardship to obtain its substantial equivalent by other means.
- (d) Discretionary filings by department. On receipt of notice under subsection (c) of this section, the department may take action as may be appropriate to protect confidential information. The department has standing to intervene in a suit or administrative hearing for the purpose of filing a motion for protective order and in camera inspection in accordance with this section.
- (e) Motion for protective order, or equivalent, and in camera inspection. The movant shall ask the court to enter an order in accordance with this section regarding the release of confidential information. If necessary to resolve a dispute regarding the confidential status or direct relevance of any information sought to be released, the party seeking the order shall move for an in camera inspection of the pertinent information. Until subject to a protective order, or its equivalent, confidential information may not be released, and, if necessary, the party seeking an order shall request the court officer to deny discovery of such confidential information.
- (f) Protective order or equivalent. An order obtained pursuant to the terms of this section must:
- (1) specifically bind each party to the litigation, including one who becomes a party to the suit after the order is entered, each attorney of record, and each person who becomes privy to the confidential information as a result of its disclosure under the terms of the order;
 - (2) describe in general terms the confidential information to be produced;
 - (3) state substantially the following in the body of the order:
 - (A) absent court order to the contrary, only the court reporter and attorneys of record in the cause may copy confidential information produced under the order in whole or part;
 - (B) the attorneys of record are custodians responsible for all originals and copies of confidential information produced under the order and must insure that disclosure is limited to those persons specified in the order;
 - (C) confidential information subject to the order and all information derived there from may be used only for the purposes of the trial, appeal, or other proceedings in the case in which it is produced;
 - (D) confidential information to be filed or included in a filing in the case must be filed with the clerk separately in a sealed envelope bearing suitable identification, and is available only to the court and to those persons authorized by the order to receive confidential information, and all originals and copies made of such documents and records must be kept under seal and disclosed only in accordance with the term of the protective order;

(E) confidential information produced under the order may be disclosed only to the following persons and only after counsel has explained the terms of the order to the person who will receive the information and provided that person with a copy of the order;

(i) to a party and to an officer, employee, or representative of a party, to a party's attorneys (including other members and associates of the respective law firms and contract attorneys in connection with work on the case) and, to the extent an attorney of record in good faith determines disclosure is necessary or appropriate for the conduct of the litigation, legal assistants, office clerks and secretaries working under the attorney's supervision;

(ii) to a witness or potential witness in the case;

(iii) to an outside expert retained for consultation or for testimony, provided the expert agrees to be bound by the terms of the order and the party employing the expert agrees to be responsible for the compliance by its expert with this confidentiality obligation; and

(iv) to the court or to an appellate officer or body with jurisdiction of an appeal in the case;

(F) at the request of the department or a party, only the court, the parties and their attorneys, and other persons the court reasonably determines should be present may attend the live testimony of a witness or discussions or oral arguments before the court that may include confidential information or relate to such confidential information. The parties shall request the court to instruct all persons present at such testimony, discussions, or arguments that release of confidential information is strictly forbidden;

(G) a transcript, including a deposition transcript, that may include confidential information subject to non-disclosure is subject to the order. The party requesting the testimony of a current or former department officer, employee, or agent shall, at its expense, furnish the department a copy of the transcript of the testimony once it has been transcribed.

(H) Upon ultimate conclusion of the case by final judgment and the expiration of time to appeal, or by settlement or otherwise, counsel for each party shall return all copies of every document subject to the order for which the counsel is custodian to the party that produced the confidential information; and

(I) Production of documents subject to the order does not waive a claim of privilege or right to withhold the documents from a person not subject to the order.

(4) Paragraph (3)(A), (B) and (E) - (H) of this subsection are subject to modification by the court for good cause before the conclusion of the proceeding, after giving the department notice and an opportunity to appear.

Source Note: The provisions of this §91.8000 adopted to be effective March 14, 2004, 29 TexReg 2638; amended to be effective July 12, 2009, 34 TexReg 4513

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BUSINESS AND COMMERCE CODE

TITLE 11. PERSONAL IDENTITY INFORMATION

SUBTITLE B. IDENTITY THEFT

CHAPTER 521. UNAUTHORIZED USE OF IDENTIFYING INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 521.001. SHORT TITLE. This chapter may be cited as the Identity Theft Enforcement and Protection Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.002. DEFINITIONS. (a) In this chapter:

(1) "Personal identifying information" means information that alone or in conjunction with other information identifies an individual, including an individual's:

(A) name, social security number, date of birth, or government-issued identification number;

(B) mother's maiden name;

(C) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

(D) unique electronic identification number, address, or routing code; and

(E) telecommunication access device as defined by Section 32.51, Penal Code.

(2) "Sensitive personal information" means, subject to Subsection (b):

(A) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:

(i) social security number;

(ii) driver's license number or government-issued identification number; or

(iii) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or

(B) information that identifies an individual and relates to:

(i) the physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) payment for the provision of health care to the individual.

(3) "Victim" means a person whose identifying information is used by an unauthorized person.

(b) For purposes of this chapter, the term "sensitive personal information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. IDENTITY THEFT

Sec. 521.051. UNAUTHORIZED USE OR POSSESSION OF PERSONAL IDENTIFYING INFORMATION. (a) A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

(b) It is a defense to an action brought under this section that an act by a person:

(1) is covered by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.); and

(2) is in compliance with that Act and regulations adopted under that Act.

(c) This section does not apply to:

(1) a financial institution as defined by 15 U.S.C. Section 6809; or

(2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.052. BUSINESS DUTY TO PROTECT SENSITIVE PERSONAL INFORMATION. (a) A business shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business.

(b) A business shall destroy or arrange for the destruction of customer records containing sensitive personal information within the business's custody or control that are not to be retained by the business by:

(1) shredding;

(2) erasing; or

(3) otherwise modifying the sensitive personal information in the records to make the information unreadable or indecipherable through any means.

(c) This section does not apply to a financial institution as defined by 15 U.S.C. Section 6809.

(d) As used in this section, "business" includes a nonprofit athletic or sports association.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 2, eff. September 1, 2009.

Sec. 521.053. NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA. (a) In this section, "breach of system security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner.

(b) A person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made as quickly as possible, except as provided by Subsection (d) or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b-1) If the individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person is a resident of a state that requires a person described by Subsection (b) to provide notice of a breach of system security, the notice of the breach of system security required under Subsection (b) may be provided under that state's law or under Subsection (b).

(c) Any person who maintains computerized data that includes sensitive personal information not owned by the person shall notify the owner or license holder of the information of any breach of system security immediately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(d) A person may delay providing notice as required by Subsection (b) or (c) at the request of a law enforcement agency that determines that the notification will impede a criminal investigation. The notification shall be made as soon as the law

enforcement agency determines that the notification will not compromise the investigation.

(e) A person may give notice as required by Subsection (b) or (c) by providing:

(1) written notice at the last known address of the individual;

(2) electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001; or

(3) notice as provided by Subsection (f).

(f) If the person required to give notice under Subsection (b) or (c) demonstrates that the cost of providing notice would exceed \$250,000, the number of affected persons exceeds 500,000, or the person does not have sufficient contact information, the notice may be given by:

(1) electronic mail, if the person has electronic mail addresses for the affected persons;

(2) conspicuous posting of the notice on the person's website; or

(3) notice published in or broadcast on major statewide media.

(g) Notwithstanding Subsection (e), a person who maintains the person's own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for notice under this section complies with this section if the person notifies affected persons in accordance with that policy.

(h) If a person is required by this section to notify at one time more than 10,000 persons of a breach of system security, the person shall also notify each consumer reporting agency, as defined by 15 U.S.C. Section 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices. The person shall provide the notice required by this subsection without unreasonable delay.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 14, eff. September 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1368 (S.B. 1610), Sec. 1, eff. June 14, 2013.

SUBCHAPTER C. COURT ORDER DECLARING INDIVIDUAL

A VICTIM OF IDENTITY THEFT

Sec. 521.101. APPLICATION FOR COURT ORDER TO DECLARE INDIVIDUAL A VICTIM OF IDENTITY THEFT. (a) A person who is injured by a violation of Section 521.051 or who has filed a criminal complaint alleging commission of an offense under Section 32.51, Penal Code, may file an application with a district court for the issuance of an order declaring that the person is a victim of identity theft.

(b) A person may file an application under this section regardless of whether the person is able to identify each person who allegedly transferred or used the person's identifying information in an unlawful manner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.102. PRESUMPTION OF APPLICANT'S STATUS AS VICTIM. An applicant under Section 521.101 is presumed to be a victim of identity theft under this subchapter if the person charged with an offense under Section 32.51, Penal Code, is convicted of the offense.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.103. ISSUANCE OF ORDER; CONTENTS. (a) After notice and hearing, if the court is satisfied by a preponderance of the evidence that an applicant under Section 521.101 has been injured by a violation of Section 521.051 or is the victim of an offense under Section 32.51, Penal Code, the court shall enter an order declaring that the applicant is a victim of identity theft resulting from a

violation of Section 521.051 or an offense under Section 32.51, Penal Code, as appropriate.

(b) An order under this section must contain:

- (1) any known information identifying the violator or person charged with the offense;
- (2) the specific personal identifying information and any related document used to commit the alleged violation or offense; and
- (3) information identifying any financial account or transaction affected by the alleged violation or offense, including:
 - (A) the name of the financial institution in which the account is established or of the merchant involved in the transaction, as appropriate;
 - (B) any relevant account numbers;
 - (C) the dollar amount of the account or transaction affected by the alleged violation or offense; and
 - (D) the date of the alleged violation or offense.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.104. CONFIDENTIALITY OF ORDER. (a) An order issued under Section 521.103 must be sealed because of the confidential nature of the information required to be included in the order. The order may be opened and the order or a copy of the order may be released only:

- (1) to the proper officials in a civil proceeding brought by or against the victim arising or resulting from a violation of this chapter, including a proceeding to set aside a judgment obtained against the victim;
- (2) to the victim for the purpose of submitting the copy of the order to a governmental entity or private business to:
 - (A) prove that a financial transaction or account of the victim was directly affected by a violation of this chapter or the commission of an offense under Section 32.51, Penal Code; or
 - (B) correct any record of the entity or business that contains inaccurate or false information as a result of the violation or offense;
- (3) on order of the judge; or

(4) as otherwise required or provided by law.

(b) A copy of an order provided to a person under Subsection (a)(1) must remain sealed throughout and after the civil proceeding.

(c) Information contained in a copy of an order provided to a governmental entity or business under Subsection (a)(2) is confidential and may not be released to another person except as otherwise required or provided by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.105. GROUNDS FOR VACATING ORDER. A court at any time may vacate an order issued under Section 521.103 if the court finds that the application filed under Section 521.101 or any information submitted to the court by the applicant contains a fraudulent misrepresentation or a material misrepresentation of fact.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. REMEDIES

Sec. 521.151. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter is liable to this state for a civil penalty of at least \$2,000 but not more than \$50,000 for each violation. The attorney general may bring an action to recover the civil penalty imposed under this subsection.

(a-1) In addition to penalties assessed under Subsection (a), a person who fails to take reasonable action to comply with Section 521.053(b) is liable to this state for a civil penalty of not more than \$100 for each individual to whom notification is due under that subsection for each consecutive day that the person fails to take reasonable action to comply with that subsection. Civil penalties under this section may not exceed \$250,000 for all individuals to whom notification is due after a single breach. The attorney general may bring an action to recover the civil penalties imposed under this subsection.

(b) If it appears to the attorney general that a person is engaging in, has engaged in, or is about to engage in conduct that violates this chapter, the attorney general may bring an action in the name of the state against the person to restrain the violation by a temporary restraining order or by a permanent or temporary injunction.

(c) An action brought under Subsection (b) must be filed in a district court in Travis County or:

- (1) in any county in which the violation occurred; or
- (2) in the county in which the victim resides, regardless of whether the alleged violator has resided, worked, or transacted business in the county in which the victim resides.

(d) The attorney general is not required to give a bond in an action under this section.

(e) In an action under this section, the court may grant any other equitable relief that the court considers appropriate to:

- (1) prevent any additional harm to a victim of identity theft or a further violation of this chapter; or
- (2) satisfy any judgment entered against the defendant, including issuing an order to appoint a receiver, sequester assets, correct a public or private record, or prevent the dissipation of a victim's assets.

(f) The attorney general is entitled to recover reasonable expenses, including reasonable attorney's fees, court costs, and investigatory costs, incurred in obtaining injunctive relief or civil penalties, or both, under this section. Amounts collected by the attorney general under this section shall be deposited in the general revenue fund and may be appropriated only for the investigation and prosecution of other cases under this chapter.

(g) The fees associated with an action under this section are the same as in a civil case, but the fees may be assessed only against the defendant.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 15, eff. September 1, 2012.

Sec. 521.152. DECEPTIVE TRADE PRACTICE. A violation of Section 521.051 is a deceptive trade practice actionable under Subchapter E, Chapter 17.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2054.1125. SECURITY BREACH NOTIFICATION BY STATE AGENCY.

(a) In this section:

(1) "Breach of system security" has the meaning assigned by Section 521.053, Business & Commerce Code.

(2) "Sensitive personal information" has the meaning assigned by Section 521.002, Business & Commerce Code.

(b) A state agency that owns, licenses, or maintains computerized data that includes sensitive personal information, confidential information, or information the disclosure of which is regulated by law shall, in the event of a breach or suspected breach of system security or an unauthorized exposure of that information:

(1) comply with the notification requirements of Section 521.053, Business & Commerce Code, to the same extent as a person who conducts business in this state; and

(2) not later than 48 hours after the discovery of the breach, suspected breach, or unauthorized exposure, notify:

(A) the department, including the chief information security officer and the state cybersecurity coordinator; or

(B) if the breach, suspected breach, or unauthorized exposure involves election data, the secretary of state.

Added by Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 4, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 683 (H.B. 8), Sec. 8, eff. September 1, 2017.



CREDIT UNION DEPARTMENT POLICY

POLICY #138

October 19, 2018

BREACH OF CONFIDENTIAL INFORMATION

Purpose: This document outlines procedures and protocols for notification of and response to a breach involving confidential information acquired or maintained by the Department or any of its employees.

Definitions:

Breach: loss of, or unauthorized access to, electronic or paper records containing confidential information.

Confidential Information: information that, if exposed, could invade the privacy of an individual or lead to identify theft or other adverse situations. Confidential information includes the name, address, or telephone number of an individual plus any of the following data elements:

- Social Security Number
- Driver License Number
- Government Issued Identification Number
- Credit Card Number
- Debit Card Number
- Any other number or code that allows access to or use of an individual's financial or credit account.

Confidential information also includes any information considered confidential under the Finance Code.

Suspected Breach: Confidential information will be considered to have been compromised, or reasonably believed to have been compromised, by an unauthorized person in any of the following situations:

1. Equipment – Lost or stolen electronic equipment (including laptops, desktop computers, and USB storage devices) containing unencrypted confidential information.
2. Hacking – A successful intrusion of computer system via the network where it is indicated that unencrypted confidential information has been downloaded, copied, or otherwise accessed.
3. Unauthorized Access – Includes situations where someone has received unauthorized access to confidential information, such as sending mail or an email to the wrong recipient, incorrect computer access setting, inadvertent posting of confidential information in electronic format, physical intrusion into the office, or other non-hacking incidents.

Internal Notification Responsibility: An employee who uses or maintains confidential information entrusted to the Department is required to immediately notify the Commissioner or Deputy Commissioner, in the event of a suspected or actual breach of the information. The notification should include as much information as possible about the nature of the information or records breached, whether the information was encrypted, the date of the breach, and the extent of the breach. The notification should indicate whether the information is now secure or whether the breach is on-going. The employee must provide updated information as frequently as it becomes available.

Containment: The first priority after any type of breach is discovered is to contain the breach and notify senior management as quickly as possible. The information must be secured, and the integrity and security of the information must be restored.

Preliminary Review: The Department must take immediate action to determine the extent and category of the breach and take such further actions as is necessary to contain the breach or recover the compromised information. The Department must document the breach, the scope of the breach, steps taken to contain the breach, and the names or categories of persons whose confidential information was, or may have been, accessed or acquired by an unauthorized person.

Actions: After identifying the level of risk, the Department will review TEX. BUS. & COM. CODE Chapter 521 and TEX. GOV'T CODE §2054.1125 for external notification requirements.

If it is determined that external notification of the breach is warranted, the Department will develop a response plan. The plan shall address the:

- Deadlines for notifying affected individuals
- Methods of notification
- Content of notification
- Other parties requiring notification (Commission, Governor's Office, Legislative Leaders, Attorney General's Office)
- Need to contact the media
- Need for a criminal referral

Aftermath: After any breach, the Department will review the cause of breach and the actions taken. In addition, the Department will consider the need for corrective actions or improvements in the Department's response. Any changes deemed appropriate or necessary shall be implemented immediately.

HISTORY

ADOPTED:	November 1, 2014
LAST REVIEWED DATE:	October 18, 2018
REVISED:	January 31, 2017
	November 1, 2015
	November 1, 2014



CREDIT UNION DEPARTMENT POLICY

POLICY #140

October 24, 2018

PUBLIC INFORMATION ACT POLICY

INTRODUCTION

The Public Information Act, TEX. GOV'T. CODE ch. 552 ("Act") gives the public the right to access public records of the Credit Union Department ("Department"). The Department's officer for public information and the officer's agent may not ask why those records are wanted. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. The Department will promptly release the following sorts of requested information: information that is not confidential by law, either constitutional, statutory, or by judicial decision; information that is not excepted from disclosure by a previous determination of the Office of the Attorney General ("OAG"); or information for which an exception to disclosure has not been sought.

RIGHTS OF REQUESTORS

All people who request public information have the right to:

- Receive treatment equal to all other requestors.
- Receive a statement of estimated charges in advance.
- Choose whether to inspect the requested information, receive a copy of the information, or both.
- Be notified when the Department asks the OAG for a ruling on whether the information may or must be withheld and receive a copy of the Department's written comments.
- Lodge a complaint with the OAG regarding any improper charges for responding to a public information request.
- Lodge a complaint with the OAG Hotline or the county attorney or criminal district attorney regarding any alleged violation of the Act.

RESPONSIBILITIES OF REQUESTORS

All people who request public information have the responsibility to:

- Submit a written request according to the Department's procedures.
- Include enough description and detail of the requested information so that the Department can accurately identify and locate the requested items.

- Cooperate with the Department's reasonable requests to clarify the type or amount of information requested.
- Respond promptly in writing to all written communications from the Department (including any written estimate of charges).
- Make a timely payment for all valid charges.
- Keep all appointments for inspection of records or for pick-up of copies.

RIGHTS OF GOVERNMENTAL BODIES

In responding to information requests, the Department has the right to:

- Establish reasonable procedures for inspecting or copying information.
- Request and receive clarification of vague or overly broad requests.
- Request an OAG ruling regarding whether any information may or must be withheld.
- Receive timely payment for all copy charges or other charges.
- Obtain payment of overdue balances exceeding \$100.00, or obtain a security deposit, before processing additional requests from the same requestor.
- Request a bond, prepayment, or deposit if estimated costs exceed \$100.00.

RESPONSIBILITIES OF THE DEPARTMENT

In responding to information requests, the Department has the responsibility to:

- Treat all requestors equally.
- Be informed about the Act and any other open records laws and educate employees on the requirements of those laws.
- Inform the requestor of cost estimates and any changes in the estimates.
- Confirm that the requestor agrees to pay the costs before incurring the costs.
- Promptly provide requested information that is not confidential or for which the Department does not seek a ruling on disclosure from the OAG.
- Inform the requestor if the information will not be provided within ten (10) business days and give an estimated date on which it will be provided.
- Cooperate with the requestor to schedule reasonable times for inspecting or copying information.
- Ensure that requests for information that require programming or manipulation of data are expeditiously and accurately processed.

- Follow OAG regulations on charges; not overcharge on any items; not bill for items that must be provided without charge.
- Inform third parties if their proprietary information is being requested from the Department, and the Department in good faith reasonably believes the requested information to be within an exception to disclosure.
- Inform the requestor when the OAG has been asked to rule on whether information may or must be withheld and provide a copy of the Department's written comments to the requestor.
- Comply with any OAG ruling on whether an exception applies, or file suit against the OAG within thirty (30) days.
- Respond in writing to all written communications from the OAG regarding complaints about violations of the Act.

PROCEDURES TO OBTAIN INFORMATION

- 1) The information request:
 - a) Submit a request by mail, fax, email, or in person to the Department contact identified below.
 - b) Include enough description and detail about the information requested to enable the Department to accurately identify and locate the information requested.
 - c) Cooperate with the Department's reasonable efforts to clarify the type or amount of information requested.
- 2) Information to be released:
 - a) The requestor may review it promptly, and if it cannot be produced within ten (10) business days, the public information officer will notify the requestor in writing of the reasonable date and time when it will be available.
 - b) Keep all appointments to inspect records and to pick up copies. Failure to keep appointments may result in losing the opportunity to inspect the information at the time requested.
- 3) Cost of records:
 - a) **A response to any written estimate of charges for copies of requested information must be received within ten (10) business days of the date the Department sent it and, in the manner, required by law or the request is considered automatically withdrawn.**
 - b) If estimated costs to provide copies of requested information exceed \$100.00, the Department requires a bond, deposit, or prepayment.
 - c) Make a timely payment for all mutually agreed charges. Before processing a new request for information from the requestor, the Department requires a deposit or bond for payment of unpaid amounts on prior requests exceeding \$100.00.
 - d) For purposes of the Department's requesting a ruling on disclosure (see below), an information request is considered received on the date the Department receives any required deposit or bond

for anticipated costs or unpaid amounts. Failure to pay any required deposit or bond within ten (10) business days after the Department sends the requestor notice that such deposit or bond is required will result in the information request being automatically withdrawn.

- 4) Information that may be withheld because of an exception to disclosure:
- a) By the 10th business day after the later of the Department's receiving the written request or any required deposit or bond, the Department must:
 - i) request a ruling on disclosure from the OAG and state which exceptions apply;
 - ii) notify the requestor of the referral to the OAG; and
 - iii) notify third parties if the request involves their proprietary information.
 - b) Failure to request a ruling from the OAG and to notify the requestor within ten (10) business days of receipt of the written request for information will result in a presumption that the information is open unless there is a compelling reason to withhold it.
 - c) Requestors shall receive a copy of the Department's written comments to the OAG. If the comments disclose the requested information for which a ruling is sought, the requestor will be provided a redacted copy. Requestors may send a letter to the OAG arguing for release of the requested information.
 - d) The OAG must issue a decision no later than the 45th business day from the day after the OAG received the request for a decision. The OAG may extend the time for issuing a decision by an additional ten (10) business days.
 - e) the Department may not ask the OAG to reconsider a ruling, but the Department may seek clarification of the OAG's ruling or challenge it in court.

THE OFFICER FOR PUBLIC INFORMATION

The commissioner, as the chief administrative officer for the agency is the Officer for Public Information, who is responsible for the preservation and care of the agency's public records.

The commissioner shall designate an agent to act as public information officer/coordinator (PIO) for the agency. The PIO shall compile and coordinate responses to all public information requests the agency receives. However, the commissioner retains ultimate responsibility for that member's full compliance with the Act. The Department's Legal Assistant has been designated as the agency's PIO.

The PIO shall:

- complete open records training as required by the Act;
- keep an accurate record of all public information requests the agency receives for a given year, including the name and contact information of each requestor, the date on which a request is received, the date on which the records are made available or copies provided, the type of information requested, how much is charged to and paid by the requestor for copies and other costs, if any, and any other information necessary to demonstrate the member's compliance with the Act for each request;
- also keep a record of when an Attorney General decision is sought, and the decision of the Attorney General for a given request, if any;
- not later than the end of each month, the PIO shall electronically submit to the Office of the Attorney General all necessary information on the number and nature of public information

requests the member responded to during the prior month (i.e., reports for September of a given year should be submitted to the Attorney General's Office by the end of October of that year);

- ensure that the agency timely makes all other reports to the Office of the Attorney General which are required by the Act; and
- prominently display the sign in the form approved by the Attorney General "that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information under" the Act.

The PIO shall not make any inquiry of a requestor except to establish proper identification, to seek clarification to determine what public information is being requested, or to seek to narrow the scope of a request for a large amount of information. All requests shall be treated uniformly without regard to the position or occupation of the requestor or whether he or she is a member of the media.

To request information from the Department, contact:

Public Information Requests:

Contact: Credit Union Department

In person: Credit Union Department, 914 E. Anderson Lane, Austin, Texas
78752-1699

By mail: Credit Union Department, 914 E. Anderson Lane, Austin, Texas
78752-1699

By fax: 512-832-0278

By e-mail: openrecords@CUD.texas.gov

To be considered a written request subject to the Act, an e-mailed or faxed information request must be sent to the Department contact as indicated above.

For complaints regarding failure to release public information, a requestor may contact the OAG, Open Records Hotline, at 512-478-6736 or toll-free at 877-673-6839. The requestor's county or district attorney may also be contacted.

For complaints regarding overcharges, a requestor may contact the OAG, Cost Rules Administrator, Open Records Division, at 512-475-2497 or toll-free at 888-672-6787.

If special accommodation pursuant to the Americans with Disabilities Act (ADA) are needed, a requestor may contact the Department at 812-837-9236.

For more information regarding the Public Information Act and other open government laws, a requestor may visit the OAG's website at:

<http://www.oag.state.tx.us/open/index.shtml>.

HISTORY

ADOPTED:	April 1, 2016
LAST REVIEWED DATE:	October 17, 2018
REVISED:	May 25, 2017
	April 1, 2016



CREDIT UNION DEPARTMENT PROCEDURE

Procedure #102

November 29, 2018

PUBLIC INFORMATION REQUESTS

Under the provisions of the Public Information Act (PIA, formerly and commonly known as the Open Records Act), certain Credit Union Department records are available for public inspection and use. On occasion, individuals will request either specific information or copies of specific records or documents. The Department must respond to a request as soon as possible. If an Attorney General's decision is required, the Attorney General must receive it no later than ten (10) business days after the original request was submitted. To provide expeditious service to these requests and to ensure that no confidential or privileged information is disclosed, the following procedure must be followed when responding:

1. **All requests must be in writing.** If the request is made by mail or in person, the employee receiving the request shall date-stamp it and give it to the Department's designated Legal Assistant to log it into the database. If a request is e-mailed, the Legal Assistant will log in the request using the date of the e-mail.
2. The request shall then be given to the Department's Legal Assistant for review. In the absence of the Legal Assistant, the request should be given to the Staff Services Officer. **Since there are potential criminal penalties for both releasing confidential information and for withholding information that must be released, all requests must be reviewed by the Legal Assistant or the Staff Services Officer.**
3. The request will be evaluated to determine if the Department needs to request a decision from the Attorney General for exceptions to releasing the requested information.
4. If an Attorney General decision is required, the Deputy Commissioner will prepare the request and notify the requestor. The Deputy Commissioner will coordinate the release of the information, if any. If the PIA request involves a third party's privacy or property interests, the Legal Assistant will make a good faith effort to notify the third party as set out in TEX. GOV'T CODE §552.305 of the PIA.
5. For a large request, tests should be done to provide an estimate of charges. See the most recent version of the Texas Attorney General's Public Information Handbook to determine the appropriate procedures for handling voluminous requests.
https://www.texasattorneygeneral.gov/files/og/publicinfo_hb.pdf
6. For all requests where the charges for collection or copies of the information will exceed \$40.00, the Legal Assistant or Staff Services Officer, as appropriate, will send a letter of estimated charges within two business days of receipt of the request (Estimated Charges Letter—Exhibit A). No information will be collected or copied until a written response to this letter is received from the requestor.

8. If no response is received from the requestor within ten business days from the date the Estimated Charges Letter is sent, the request will be considered automatically withdrawn.
9. If the Estimated Charges Letter exceeds \$100, a deposit is required and no information will be collected or copied until the deposit is received.
10. All public information requests, Estimated Charges Letters, and responses received, shall be filed in a Departmental "Public Information Act Request" file and maintained in accordance with the Department's records retention schedule.
11. A requestor may choose to inspect the documents in the Department's office. If he or she chooses this option, the following procedure shall be followed:
 - a. The requestor shall be notified of several times available for inspection when a staff member can be present to supervise the inspection.
 - b. Documents to be inspected shall be reviewed by the Legal Assistant and the Deputy Commissioner prior to inspection by the requestor to assess whether any of the information is confidential.
 - c. A staff member must be present at all times during the inspection process.

The requestor may take notes and make copies of up to fifty (50) pages total without charge. If the requestor chooses to receive more than fifty (50) pages, the personnel and overhead charges for collection, redaction, and copying of the documents will be allocated to the number of pages the requestor takes.

12. Once a request is completed, the Legal Assistant will enter the date of completion into the Department database. The Legal Assistant will also make the monthly report to the Attorney General's office.

Some guidelines regarding public information requests are set out below:

Individual Credit Union Annual Reports, the Reports of Examination, and proposed building programs, which have been submitted by individual credit unions to the Commissioner for approval, are exempt from disclosure under the Public Information Act, TEX. GOV'T CODE §552.112(a). Credit union records which pertain to the financial condition or business of the credit union, such as Complaints or Correspondence, are confidential under TEX. FINANCE CODE §126.002. These confidential documents will not be released in response to requests. To withhold the records, however, the Department will need to obtain a decision from the Attorney General.

Social Security numbers of living people are exempt from disclosure; the Department does not need to request a decision from the Attorney General to withhold Social Security numbers.

The Public Information Act does not require an agency to develop, and the Department is neither staffed nor funded to develop, statistics or other data as desired by individual interests. The Public Information Act only requires that the Department make available those records that are on file or are available to the Department and have not been exempted for public inspection and use. These records are to be made available in the form and format in which they are maintained on file by the Department.

Requests for the reproduction of information will NOT be accepted by telephone. Requests must be made in writing. However, if a request is received by telephone, the requester should be advised of the Department's policy on providing records and of the charges for reproduction of records.

Requests for the reproduction of records by individuals who personally visit the office will be honored at that time only if the workload in the office permits. If the office workload does not permit the immediate reproduction of the records requested, the following will be recorded:

1. The individual's name and address;
2. A listing of the records desired; and
3. The reproduction charges applicable for providing records.

The requester can either return to the office at a later date and pick up the records reproduced, or the reproduced records can be mailed to the address provided. If the records are to be mailed, a postage fee may also be added to the total charge and collected.

Charges for copies of public information:

The Credit Union Department adopts charges for copies of public information as stated in the rules of the Attorney General, 1 TEX. ADMIN. CODE Part 3, Chapter 70, and in the Texas Rules for Credit Unions TEX. ADMIN. CODE §97.114.

The following charges for copies of Credit Union Department records apply:

1. Reproduction charges \$0.10 per page
No fee will be collected if the total reproduction charge is \$40.00 or under.
2. Personnel time for locating, copying and preparing for delivery (if request exceeds 50 pages or information is not readily available) \$15.00 per hour
3. Overhead \$3.00 per hour of personnel time
4. Certification charge \$5.00 per document
5. Postage. If reproduced records are to be mailed, the requester may be charged for the actual first class postage involved.
6. Other charges as listed on the Charges for Public Records TEX. ADMIN. CODE §97.114.

A Public Records Charges Billing will be completed for all requests which result in charges to the requestor. A copy will be returned with the requested records or documents. If the anticipated charges exceed \$100, the Department may require a bond or prepayment. The Department may waive or reduce the amount of charges if it determines providing information is in the "public interest" or if the cost of collecting the amount owed exceeds the amount charged.

HISTORY

ADOPTED:	March 15, 2007
LAST REVIEWED DATE:	November 28, 2018
REVISED:	November 28, 2018
	January 5, 2017
	December 1, 2016
	October 5, 2016
	October 5, 2015

EXHIBIT A

SAMPLE LETTER OF ESTIMATED CHARGES

NOTE: Items 1 -5 are MANDATORY

DATE

Dear :

We are in receipt of your request. We have determined that the charges for the copies will be more than \$40. Therefore, the following statement is provided pursuant to TEX. GOV'T CODE, Chapter 552, §552.2615.

1. Itemized statement of estimated charges:

Copies, Approx. _____ pages @ \$.10/page	\$ _____
Personnel, _____ hours @ \$15/hr.	_____
Overhead, \$(Personnel charge) x .20	_____
Postage (actual amount)	_____
ESTIMATED TOTAL	\$ _____

2. A less expensive way of obtaining this information would be for you to inspect the records at our office. If you choose this option, please provide me with three dates and times when it will be convenient for you to come. (Optional/If applicable: Please note that I will be out of the office on/from _____ through _____ inclusive.) If you inspect the information, you will be able to take notes and copy up to 50 pages total without charge. If you choose to receive more than 50 pages, the personnel and overhead charges will be allocated to the number of pages you take.
3. You must select one of the following:
- Accept the charges and agree to pay; or
 - Modify your request. (If you choose to inspect the records, it is considered a modification, not a new request.)
4. You must respond to this letter in writing and within 10 (ten) business days from the date it was sent. If you do not respond, your request will be considered automatically withdrawn.
5. You may respond by email, fax, regular mail, or by delivering your written response to our office.
6. (Optional/If Applicable) Your request is also in excess of \$100. In accordance with TEX. GOV'T CODE, Chapter 552, §552.263, we request a deposit of \$ _____. Your check or money order must be made payable to: _____, and mailed to: 914 East Anderson Lane, Austin, TX 78752-1699. You may also pay in cash at our office.

EXHIBIT A

7. Please note that no work will be undertaken until we receive your written response. If you accept the charges, and a deposit has been requested, your deposit must be received before any copies will be made.
8. If you pay a deposit and the actual final amount is less than the amount paid, you will be issued a refund by separate cover. If the actual amount is more than what you paid but within 20 percent of that amount, payment must be made in full before you can receive the copies. An updated statement will be sent to you if the final amount will exceed 20 percent of the first agreed estimated amount.

NOTE TO THE GOVERNMENTAL BODIES:

Statement below is optional. It speeds up the process and the requestors like to be able to do this. However, only use this option when a deposit is not required.

If you accept the estimated charges and agree to pay them, please sign and date the statement below and send it by fax to: (Name) (Fax number)

I accept the estimated charges and agree to pay them.

Print Name

Signature

Date



CREDIT UNION DEPARTMENT POLICY

Policy #203

November 7, 2018

ETHICS AND STANDARDS OF CONDUCT

I. OVERVIEW

Pursuant to TEX. GOV'T CODE Chapter 572, the Credit Union Department promulgates the following ethics policy which prescribes standards of conduct for all agency employees. The applicable definitions and provisions of TEX. GOV'T CODE §§ 556.004, 572.051, 660.113, 660.016, 2101.0115, 2113.012, 2113.013, 2113.101, 2203.004 and opinions of the Texas Ethics Commission apply to this policy. This ethics policy does not supersede any applicable federal or Texas law or administrative rule.

All Department employees must familiarize themselves with this ethics policy. A copy of this policy will be distributed to each new employee not later than the third business day after the date the person begins employment with the Department.

All Department employees must abide by all applicable federal and Texas laws, administrative rules, and Department policies related to standards of conduct and this ethics policy. A Department employee who violates any provision of the Department's conduct policies is subject to termination of the employee's state employment or another employment-related sanction. A Department employee who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties in addition to any employment-related sanction.

The Department is committed to the values of excellence, integrity and truth in attaining its regulatory and supervisory mission. These values are exemplified by each employee's responsible performance of duties consistent with the Department's Policies, Rules and professional standards, as well as the state laws governing agency officers and employees.

The Department believes that it is essential to conduct business operations in full compliance with applicable laws and rules and to comply with and enforce established policies and the state's Standards of Conduct. Any failure to comply with these laws, rules, policies, and standards seriously threatens the reputation of the Department, shakes the confidence of the employees, credit unions, and other stakeholders, and is contrary to the Department's purpose and obligations to the citizens of this state.

It is the responsibility of all Department employees to promptly and forthrightly disclose any possible violations of law, rule, policy or other misconduct to permit the Department to meet its responsibility to the public and its employees. Employees should report their concerns to their immediate or next level supervisor, if feasible. If the employee feels uncomfortable discussing the issue with these individuals, the employee should communicate directly with the Deputy Commissioner or Commissioner.

All employees must avoid action, whether or not specifically prohibited by statute, which might result in or create the appearance that they are:

- Using public office for private gain;
- Giving preferential treatment to a person or group;
- Losing the ability to make independent and impartial decisions or recommendations; and
- Conducting themselves in a manner that would adversely affect the public's confidence in the integrity of the Department

II. STANDARDS OF CONDUCT

A. A Department employee shall not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties, or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;
- (2) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;
- (3) disclose confidential information, information that is exempt from public disclosure under the Texas Public Information Act (TEX. GOV'T CODE §552), or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information, information that is exempt from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position;
- (4) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;
- (5) make personal investments, or have a personal or financial interest, that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest;
- (6) utilize state time, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the state or the Department, interfere with the employee's official duties, and interfere with Department functions;
- (7) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

- (8) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or
- (9) engage in any political activity while on state time or utilize state resources for any political activity.

B. A Department employee shall:

- (1) perform his or her official duties in a lawful, professional, and ethical manner befitting the state and Department; and
- (2) report any conduct or activity that the employee believes to be in violation of this ethics policy to his or her supervisor, the Deputy Commissioner or to the Commissioner.

III. REGULATORY AGENCY EMPLOYEES

A. Definitions.

- (1) “Participated” means to have taken action through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action. TEX. GOV’T CODE §572.054(h)(1).
- (2) “Particular Matter” means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, accusation, charge, arrest, or judicial or other proceeding. TEX. GOV’T CODE §572.054(h)(2).
- (3) “Business entity” means any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust. TEX. GOV’T CODE §572.002(2).
- (4) “Regulatory Agency” means any department, commission, board, or other agency, except the secretary of state and the comptroller of public accounts, that:
 - (a) is in the executive branch of state government;
 - (b) has authority that is not limited to a geographical portion of this state;
 - (c) was created by the Texas Constitution or a statute of this state; and
 - (d) has constitutional or statutory authority to engage in regulation.

TEX. GOV’T CODE § 572.002(8).

B. A former employee of the agency, who was compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1 - salary group A17 of the position classification salary schedule, may not represent any person or entity, or receive compensation for services rendered on behalf of any person or entity, regarding a particular matter in which the former employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the employee's official responsibility.

(1) Subsection III (B) of this policy does not apply to a rulemaking proceeding that was conducted before the employee's service or employment ceased.

(2) In Subsection III (B), the secretary of state and the comptroller of public accounts are not excluded from the definition of "regulatory agency."

Other laws that restrict the representation of a person before a particular state entity by a former employee of that entity will prevail over the revolving door policy found in Subsection III (B). TEX. GOV'T CODE § 572.054(e); Op. Tex. Ethics Comm'n No. 275 (1995).

C. An association or organization of employees of the agency may not solicit, accept, or agree to accept anything of value from a business entity regulated by the agency and from which the business entity must obtain a permit to operate that business in this state or from an individual directly or indirectly connected with that business entity.

D. A former member of a governing body or executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served until two (2) years after the member or executive head has ceased employment with the agency if the communication or appearance is made with the intent to influence and on behalf of any person in connection with any matter on which the person seeks official action.

E. A former state officer or employee of a regulatory agency who ceased service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered for a particular matter (a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding) in which the former officer or employee participated during their period of state service or employment.

F. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person or business entity may not accept employment from that person or entity before the second anniversary of the date that the officer's or employee's service with the state agency ended.

IV. CONFLICT OF INTEREST

Employees should not be involved with any activity or occupation that will influence their actions as an employee of the Department. All employees must properly disclose whenever a situation arises in which an employee may have a "private or personal interest" with any entity under the jurisdiction of the Department. The original copy of such disclosure will be filed in the public disclosure file maintained in the Austin office and a copy will also be maintained in the employee's

personnel file.

V. UNACCEPTABLE SOLICITATIONS AND BENEFITS, INCLUDING GIFTS

State law requires that all individuals who are responsible to the state in the performance of their official duties observe certain standards of conduct and disclosure requirements.

Employees and officers may not:

- accept or solicit any gift, favor, or service that might tend to influence an officer, employee, or officer's discharge of official duties or is offered with the intent to influence official conduct.
- accept employment or engage in a business or professional activity that might reasonably require the employee or officer to disclose confidential information acquired by reason of an official position.
- accept other employment or compensation that might impair the employee's or officer's independence of judgment in the performance of official duties.
- make personal investments that might create a conflict between the employee's or officer's private interest and the public's interest.
- intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed official duties in favor of another.

The Department may not use money to compensate a state employee who violates a standard of conduct. In addition, unless authorized by law, a Department employee may not accept money for wages or travel expenses from a person that the Department intends to, or is currently, auditing, examining, or investigating.

The prohibition from soliciting or accepting benefits includes any gift, gratuity, favor, entertainment, or anything of value, directly or indirectly, in return for actions or decisions, including inaction.

There are, however, exceptions to this general rule. Other than an employee who is authorized to make purchases on behalf of the Department, if an employee or officer is offered small benefits such as calendars or other commemorative items of nominal value, those may be accepted. In addition, recognition of an individual employee achievement, in the form of letters of recognition or plaques which have only intrinsic value, is allowed. The value of any item accepted under these exceptions may not exceed \$50. Exceptions to this general rule do not apply to an employee involved in the procurement process; an employee involved in the procurement process may not accept any item of value.

Cash or other gifts of solely monetary value (such as gift cards) may not be accepted under any circumstances. Employees may not accept alcohol as a benefit.

Any item received that does not fall under the permitted exceptions for benefits must be reported to the Austin office where a record will be kept that describes the item, its estimated value, the recipient and the final disposition. Benefits that may not be accepted must be disposed of in accordance with state ethics laws and advisory opinions; typically, these gifts may be donated to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

The best way to avoid potential embarrassment is to let people know of the Department's policy in advance. There will be times, however, when some discretion must be utilized. Benefits in the form of food, lodging, transportation, or entertainment are permissible if accepted as a "guest" and reported in accordance with any applicable reporting requirement. To accept something as a guest, even consumable and perishable gifts, the donor must be present. (For most Department employees there is no applicable reporting requirement.)

The supervisor of any employee receiving such a benefit may communicate with the sender, explaining the Department's policy, thanking them and asking them to refrain from future gift giving. Under no circumstances will any goods received and placed for general consumption leave the Department offices. No one will accept anything that cannot be eaten or enjoyed on Department premises by all employees.

Under appropriate circumstances and on a limited basis, employees may accept food, refreshment, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering of mutual interest to the state and the credit union movement, such as receptions and informational programs sponsored or hosted by universities, educational associations, the credit union industry, technical and professional associations, international organizations or government entities where it has been determined that attendance is in the interest of the Department and is related to its mission. While employees must exercise discretion, it is also permissible to accept food and beverage when a credit union arranges a "working lunch" for its board of directors to facilitate a meeting with the Department.

VI. USE OF STATE PROPERTY, SUPPLIES, EQUIPMENT, AND PERSONNEL

State property may be used only for official state purposes and should not be used for personal purposes.

State property includes, office supplies, work materials, vehicles and equipment, which may be used only for official Department work. Taking state goods for private use is not a "fringe benefit" but will subject the violator to disciplinary action.

Supervisors are reminded that it is improper for them to use subordinates for their personal benefit.

VII. LOANS AND DEPOSITS WITH CREDIT UNIONS

Neither the Commissioner, the Deputy Commissioner, nor the Director of Examination Support Activities may be a member of, or be directly or indirectly indebted to, any credit union under the jurisdiction of the Department. An employee of the Department may become a member of or be indebted to a state credit union if the deposit and/or indebtedness are both:

- a. incurred on terms no more favorable than those available to the general membership of the specific credit union; and
- b. fully disclosed to and no objection is interposed by the Commissioner before funding, including the following information:

1. The date of the indebtedness;
2. The amount;
3. The interest rate;
4. Other obligors;
5. The security; and
6. The purpose for which the monies are to be used.

An employee cannot participate in any examination or supervision of a credit union in which he/she holds membership or is indebted. Further, such employee's continued employment with the Department is contingent upon maintenance of an acceptable payment history and the satisfactory culmination of all obligations with the credit union.

It is the sole prerogative of the Commissioner to object to any employee's membership or indebtedness permitted by this section, if, in his opinion, the proposed activity may interfere, compromise or in any way adversely affect the Department's ability to maintain efficiency of operations or its ability to determine the methods, means, and personnel by which those operations are to be conducted.

VIII. CONFIDENTIAL INFORMATION

All information, except statements intended for publication, obtained by the Department relative to the financial conditions of credit unions, whether obtained through examination or otherwise, and all files and records of the Department relative to that information are confidential and not for public record or inspection. As a Department employee, you have access to confidential information about citizens of the state and business of the state that is non-public information. You may not disclose that information and only if appropriate should you disclose it to other Department employees. You are also bound by the Department's other policies concerning confidential information.

IX. EMPLOYMENT OPPORTUNITIES

Employees may at times receive offers of employment from credit unions. These offers may be considered only at a time when there is no professional contact with the credit union concerned. If an employee accepts any employment with a Texas-chartered credit union, an analysis will be performed to determine if the employee's official actions were influenced by the employment or the prospect of such employment.

As a Department employee, you should not discuss or solicit employment opportunities with any credit union during an examination. If an offer of employment is received during an examination, you should immediately advise your supervisor. Unless the offer can be rejected immediately in writing, the employee cannot continue on the examination of that credit union.

X. OFFICER, DIRECTOR OR EMPLOYEE OF A CREDIT UNION

A Department employee may not be an officer, director or employee of any credit union under the jurisdiction of the Department.

XI. NEGOTIATING LOANS WITH A CREDIT UNION

A Department employee may not be interested in or engage in the negotiation of any loan to, obligation of, or accommodation for another person to or with any credit union under the jurisdiction of the Department.

XII. POLITICAL ACTIVITY

The Department may not use any money under its control to finance or support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States.

No political activity of any kind should take place on state property, or during regular work hours. Further, political fund-raising activities for candidates or political organization may not take place on state property or in state offices. No political contributions may be solicited in the Department offices at any time. TEX. GOV'T CODE Chapter 556 prohibits a state agency from using appropriated funds in connection with a political campaign. Further, it prohibits a state officer or employee from using official authority or influence to affect the result of an election or nomination of a candidate or to achieve any political purpose. The use of state-owned or state-leased vehicles to support the candidacy of a person running for office is also prohibited.

The Department may not attempt to influence the passage or defeat of any legislation. Department employees who are requested to testify on behalf of legislation should register as a resource witness. However, this does not prohibit an officer or employee of the Department from using state resources to provide public information or to provide information responsive to a request. By law, employees are permitted to testify on their own behalf on their own time in support of or in opposition to specific legislation.

The Department is required to provide all officers and employees a copy of TEX. GOV'T CODE §§556.004, 556.005, 556.006, 556.007, and 556.008 and require a signed receipt on delivery. A new copy and receipt are required if one of those provisions is changed.

The Department shall maintain these receipts collected from current officers and employees in a manner accessible for public inspection.

XIII. GENERAL CONDUCT

Required Conduct

In general, an employee shall not engage in criminal, infamous, dishonest, immoral or notoriously disgraceful conduct, or other conduct prejudicial to the state or the Department.

Examiners and other employees working at a credit union shall exercise great care that he/she will not engage in any act that will be prejudicial to the Department.

Department Employees shall:

- a. maintain high standards of honesty, integrity, and impartiality, free from any personal consideration, favoritism, or partisan demands;

- b. be courteous, considerate, and prompt in dealing with and serving the public;
- c. conduct themselves in a manner that will not discredit or bring embarrassment to the state or the Department; and
- d. comply with state laws and regulations and Department policies.

Misconduct

Misconduct occurs when an employee engages in conduct that violates state or Department laws, rules or policies. Misconduct may include improper or inappropriate conduct, unsatisfactory or unlawful behavior or noncompliance. Examples of misconduct include, but are not limited to:

- a. failure or refusal to carry out reasonable requests, instructions, or orders of their immediate supervisor, the Deputy Commissioner, or the Commissioner;
- b. failure to meet established deadlines and work standards;
- c. misuse or misappropriation of any money or property, including equipment or supplies, belonging to the state, another employee, a guest of the Department, or a credit union;
- d. use, possession or being under the influence of alcohol, narcotics or other mind-altering drugs while on state property, in the performance of official duties, or in vehicles being used for official state business;
- e. use of profane, abusive, intimidating, or threatening language towards credit union management/staff and/or employees of the Department;
- f. disclosure of confidential information and data;
- g. concealment or failure to report inappropriate conduct or violations of established policy or procedures by another employee;
- h. unprofessional or immoral conduct while acting in an official capacity;
- i. failure to report an accident or injury as soon as practical after its occurrence;
- j. falsifying any employment applications, work reports and/or other personnel related records or documents; and
- k. performing personal work on official state time or with Department resources.

XIV. RETALIATION

In support of an environment of open communication within the Department and with its regulated credit unions, the Department will not tolerate any form of intimidation, retaliation, retribution, or reprisals (hereafter referred to as retaliation) against an employee or credit union who, in good faith, reports or inquires about alleged improper conduct or wrongful activity. The Department encourages employees and credit unions to report actual or suspected problems or

misconduct. Retaliation, whether actual or threatened, destroys a sense of trust that is central to a quality regulatory program.

No employee shall suffer reprisal or retaliation in any form as a result of following state law or Department policies or procedures. Any employee who is found to have acted in retaliation toward an employee as a result of the exercise of the employee's rights/duties hereunder is subject to discipline or dismissal.

XV. NCUA MEETINGS AND TRAINING

During the normal course of business, examination personnel will from time-to-time be scheduled to attend various meetings and/or training courses offered by the National Credit Union Administration (NCUA). In recognition of the benefit the insurer receives from a well informed and trained state examination staff, the NCUA normally pays for all travel related cost of attendees to these events. Acceptance of and/or participation in any event paid for and sponsored by the NCUA is not a violation of the policy.

XVI. RESPONSIBILITY TO REPORT INAPPROPRIATE BEHAVIOR

It is the responsibility of each employee to adhere to this policy and the duty of each supervisor to ensure compliance with this policy. In the event that an employee believes that someone is offering benefits, gifts, meals or special treatment in the expectation of receiving favorable handling, the incident must be reported immediately to a supervisor or to the Commissioner. Additionally, if an employee believes or has knowledge that a fellow employee has violated the law or policies governing ethical behavior, that information should also be reported.

An employee of the Department or credit union who believes retaliation may have been taken against them as a result of filing a grievance, complaint or report of violation of law, rule, policy or other misconduct should immediately report the retaliation to the Deputy Commissioner, or Commissioner. Delays in reporting alleged violations may impact the Department's ability to investigate such allegations.

HISTORY

ADOPTED:	November 1, 2015
LAST REVIEWED DATE:	November 7, 2018
REVISED:	November 7, 2018
	May 30, 2017
	April 1, 2016
	November 1, 2015



CREDIT UNION DEPARTMENT POLICY

POLICY #206

October 31, 2018

DISCIPLINARY ACTIONS

INTRODUCTION:

The Department's philosophy is governed by merit principles, one of which is retaining employees on the basis of their performance and separating employees whose inadequate performance cannot be corrected.

This policy establishes guidelines to be followed in the event of employee misconduct. The disciplinary actions are intended to notify the employee of the act of misconduct, the consequences of the misconduct, and the behavior expected. Disciplinary actions will be consistent for all employees under similar circumstances. Before meeting with the employee, the supervisor should consult with the Commissioner or Deputy Commissioner to ensure that the proposed disciplinary action is in compliance with the Department's policies.

Texas is an "Employment-at-Will" state: employers may terminate employees at any time for any legal reason or for no reason at all. By establishing this policy, the Department does not relinquish or in any way limit the "Employee-at-Will" relationship between the Department and its employees.

REASONS FOR DISCIPLINARY ACTION:

- A. negligence in the performance of duties;
- B. failure to meet standards of job performance;
- C. failure to follow instructions issued by management or supervision;
- D. engaging in conduct which interferes with the proper performance of duties;
- E. abandoning a position by being absent without authorization for three consecutive workdays;
- F. conviction of an offense that is incompatible with the position for which hired;
- G. making a false statement of material fact on official agency documents;
- H. violating any state or agency rules, regulations, policies, or procedures; or
- I. any other good cause related to the employee's work.

DISCIPLINARY ACTIONS FOR MISCONDUCT:

The Department has approved the use of the disciplinary actions listed below. This list is not a required “step-by-step” process. Based on the nature of the misconduct, lesser disciplinary actions may not be appropriate, and more severe disciplinary action, including termination, may be necessary as the initial disciplinary action.

- Oral counseling;
- Written reprimand;
- Probation for a period not to exceed 90 days (unless approved by the Commissioner);
- Suspension without pay, for a period not to exceed 80 working hours;
- Demotion, resulting in a reclassification to a lower grade level with a commensurate salary reduction; and
- Termination.

GENERAL PROCEDURES FOR DISCIPLINARY ACTIONS:

- a. **Oral Counseling** – The supervisor shall discuss with the employee the act or acts of misconduct, the behavior expected, and the corrective measures needed. Following the counseling session, the supervisor shall prepare a written memo stating the date that counseling took place, the general nature of the misconduct discussed, and the corrective measures discussed. The supervisor shall ask the employee to sign the memo, acknowledging the session. If the employee refuses to sign the memo, the supervisor should note the refusal on the memo. The memo shall be placed in the employee’s personnel file and a copy given to the employee.
- b. **Written Reprimand** – The supervisor shall prepare a written memo to the employee that sets forth the employee’s act or acts of misconduct, the behavior expected, the actions necessary to correct the misconduct, and the consequences for any continued or future misconduct. The employee is required to acknowledge receipt of the written reprimand by signing and dating a copy of the reprimand. If the employee refuses to sign the reprimand, the supervisor shall note the refusal on the reprimand. The reprimand shall be placed in the employee’s personnel file and a copy given to the employee.
- c. **Suspension Without Pay, Demotion** – The Commissioner or the Deputy Commissioner must approve all suspensions and demotions before they are presented to the employee. The supervisor shall give written notice to the employee setting forth the terms of the suspension without pay or the demotion. The notice shall state the act or acts of misconduct, list any prior disciplinary actions taken, the behavior expected, the actions necessary to correct the misconduct, and the consequences for any continued or future misconduct. A notice of demotion will be accompanied by a completed performance evaluation and any supporting documentation. The employee is required to acknowledge receipt of the written notice by signing and dating a copy of the notice. If the employee refuses to sign the notice, the supervisor shall note the refusal on the notice. The notice shall be placed in the employee’s personnel file and a copy given to the employee.
- d. **Probation** – The Commissioner or the Deputy Commissioner must pre-approve any probation. The supervisor shall give written notice to the employee setting forth the probation period, stating the act or acts of misconduct, listing any prior disciplinary actions taken, the behavior expected, the actions necessary to correct the misconduct, and the consequences for any

continued or future misconduct. A probation given due to substandard performance by the employee will be accompanied by a completed performance evaluation and a corrective action plan. A copy of the notice shall be placed in the employee's personnel file.

- e. **Termination** – The Commissioner and Deputy Commissioner must pre-approve any Notice of Recommendation for Termination (Notice). The immediate supervisor or second level supervisor shall prepare a written Notice that sets forth the act or acts of misconduct necessitating the termination, any prior disciplinary actions taken, and the employee's right to appeal. The employee shall be required to acknowledge the Notice by signing and dating a copy of the Notice. If the employee refuses to sign the Notice, the supervisor shall note the refusal on the Notice. The Notice shall be placed in the employee's personnel file and a copy given to the employee. Upon receipt of the Notice, the employee is immediately suspended.

RIGHT TO APPEAL AND ADMINISTRATIVE LEAVE DURING AN AGENCY INVESTIGATION:

An employee may appeal any disciplinary action taken against the employee by submitting a written response to the Commissioner no later than three working days following the employee's receipt of the disciplinary action. The employee's written response shall clearly state the reasons why the employee feels the disciplinary action should be set aside. The Deputy Commissioner will investigate and evaluate the situation and make a recommendation to the Commissioner. If the Deputy Commissioner supervises the employee, the appeal will be addressed to the Director of Information Technology, who will conduct the investigation and make a recommendation to the Commissioner. If the employee does not submit a written response by the third working day after the employee was notified of the disciplinary action, the disciplinary action shall be final.

Except for an employee given Notice of Recommendation for Termination, an employee may prepare his or her written appeal during working hours if it does not unduly interfere with employee's job responsibilities and duties. The employee may also elect to take any accrued leave time during the appeal process, upon written notice to the Commissioner or Deputy Commissioner. If the employee does not have any accrued leave time, the employee may request leave without pay.

An employee given a Notice of Recommendation of Termination is suspended with pay until a final decision is issued. If the employee does not timely submit a written response to a Notice of Recommendation of Termination, the Commissioner shall issue a Letter of Termination. The Commissioner may grant additional paid leave up to a total of ten working days, including the time on suspension, and shall include this determination in the Commissioner's written decision on the appeal or in the Letter of Termination. Any leave awarded will be in addition to any compensatory time an employee is entitled to use on termination.

The Commissioner is responsible for making the final decision regarding an appeal of a disciplinary action or a recommendation for termination. The Commissioner will advise all interested parties of the decision in writing. All documentation related to the disciplinary action, appeal, and final decision will be maintained in the employee's personnel file.

PERSONNEL EVALUATIONS AND SALARY ADJUSTMENTS:

Before completing a performance evaluation, the supervisor shall review the employee's personnel file for any disciplinary actions. The evaluation must include a discussion of any disciplinary action taken during the rating period. In determining salary adjustments, the Department will take into account any disciplinary actions taken against the employee during the rating period.

HISTORY

ADOPTED:	December 1, 2014
LAST REVIEWED DATE:	October 31, 2018
REVISED:	October 31, 2018
	January 31, 2017
	December 1, 2015
	December 1, 2014